69 FR 74498, December 14, 2004

A-449-804
2nd Review
POR: 9/01/02 - 8/31/03
Public Document
Office 1: SS

MEMORANDUM TO: Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

FROM: Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration

DATE: December 7, 2004

SUBJECT: Issues and Decision Memorandum for the Final Results of the Second Administrative Review of Certain Steel Concrete Reinforcing Bars from Latvia

Summary

We have analyzed the comments in the case and rebuttal briefs submitted by interested parties in the second administrative review of certain steel concrete reinforcing bars (rebar) from Latvia. As a result of our analysis, we have made changes to the margin calculation. We recommend that you approve the positions we have developed in the Discussion of the Issues section of this memorandum. Below is a complete list of the issues in this review for which we have received comments from the parties:

Comment 1: LM's Reported Scrap Prices

Comment 2: The Department's Treatment of LM's Merchandise Reported as "Off-spec"

Comment 3: Calculation Errors

Background

On June 10, 2004, the Department of Commerce (the Department) published the preliminary results of the second administrative review of rebar from Latvia. The period of review (POR) is September 1, 2002, through August 31, 2003. We invited parties to comment on the preliminary results. The petitioners[1] submitted a case brief on July 13, 2004; the respondent, Joint Stock Company Liepajas Metalurgs (LM), submitted a rebuttal brief on July 19, 2004.[2]

Discussion of the Issues

Comment 1: LM's Reported Scrap Prices

The petitioners argue that the Department should reject LM's submitted scrap price information and use other information on the record to value LM's scrap purchases. According to the petitioners, LM has not adequately explained the gap between its reported scrap prices and the average price of scrap in Europe during the POR. The petitioners contend that LM did not substantiate its claim that its scrap purchases are not reflective of published European scrap prices for Heavy Melt Steel 1 and 2 (HMS1/HMS2) and shredded scrap.[3]

The petitioners cite several explanations for why they believe LM's reported scrap costs are unrealistic. First, in its April 30, 2004, response, LM submitted Russian scrap price information available on the www.Metal.com.ru website.[4] The petitioners argue that this information provides an inaccurate comparison to LM's scrap prices. They argue that the information submitted by LM does not include freight expenses that would apply to export sales to Latvia; does not include a 15-percent Russian scrap export tax; and uses an aberrational two-month period for comparing prices.[5]

Citing the language of sections 782(e)(3) and 782(e)(4) of Title VII of the Tariff Act of 1930 (the Act), the petitioners argue that the Department should reject LM's reported scrap costs because the information is incomplete and unreliable, and because LM did not act to the best of its ability. They suggest that the Department use other scrap price information on the record of the proceeding, such as the average Russian scrap price adjusted for the export tax, LM's reported April 2003 - May 2003 average scrap price, or the average scrap price in Europe during the POR.[6]

---

[1] The petitioners in this proceeding are the Rebar Trade Action Coalition (RTAC) and its individual members.

[2] On August 2, 2004, we rejected both the petitioners' case brief and the respondent's rebuttal brief because both included unsolicited new factual information submitted after the Department's regulatory deadline. The respondent submitted its revised rebuttal brief on August 4, 2004; the petitioners submitted their revised case brief on August 9, 2004.

[3] See petitioners' case brief at 3-5.

[4] See LM's second supplemental questionnaire response, dated April 30, 2004, at page 3.

[5] See petitioners' case brief at 3-5.

[6] See id. at 5-6.

In its case brief, LM responds that its reported scrap prices are accurate. It points out that the manner in which it reported its scrap prices in the previous review, which the Department verified, did not change in this review. Further, the company explains that it does not purchase all of its scrap, as the Department also verified in the first review. Some of LM's scrap used in production, the company notes, comes from the disposal of depreciated assets and from by-products of previous production at its plant. LM also contends that scrap prices in the domestic Latvian market are not comparable to world scrap prices.[7]

In addition, LM rejects the petitioners' comparison of its scrap prices to prices for HMS and shredded scrap. The company contends that HMS and shredded scrap are the most expensive types of scrap. In contrast to the electric arc process that is most common in the production of rebar in the United States and Europe, LM states that it uses the open hearth furnace process. This process, according to LM, has less stringent scrap requirements. Therefore, LM argues that a comparison of its scrap prices to published European prices is inaccurate because it does not reflect the type of scrap that LM uses in its production.[8]

LM offers several other explanations to refute the petitioners' arguments on its reported scrap prices. First, LM states that the Russian scrap prices reported on the www.Metal.com.ru website did include Russian export taxes, contrary to the petitioners' allegation. Second, LM argues that the petitioners misinterpreted the chart in its April 30, 2004, submission because the chart only included LM's purchases of HMS and shredded scrap during April and May 2003. Finally, LM posits that the petitioners' suggestion that the Department use a POR average of scrap prices would distort the results because it would include a spike in global scrap prices that occurred during the POR.[9]

By way of background, on August 26, 2004, the Department issued LM a supplemental questionnaire on its reported scrap prices. The Department asked LM for information on the sources of its scrap purchases, the prices it paid for scrap, and the types of scrap that it used in production during the POR.[10] The Department also required LM to provide documentation to support its responses. LM provided a breakdown of the sources of its scrap (i.e., purchased vs. internal, domestic vs. imported, and imports by region). LM also provided internal records of all of its scrap purchases during the POR and sample purchase documentation that the Department requested for specific months (October 2002 and August 2003).

---

[7] See respondent's rebuttal brief at 1-3.

[8] See id. at 3-5.

[9] See id. at 5-7.

[10] See the Department's fourth supplemental questionnaire, dated August 26, 2004, to LM.

The Department provided interested parties with opportunities to comment on new factual information submitted in response to the Department's questionnaire. The petitioners submitted three separate sets of comments; the respondent submitted one response to the petitioners' first set of comments.[11]

In their first submission in response to LM's supplemental response, the petitioners argue that the scrap purchase information submitted in LM's September 2, 2004, supplemental response demonstrates that LM's scrap purchases were not at arm's-length. In response, LM reiterates that its submitted scrap purchase information is directly from its purchase and consumption records. LM also stresses that the Department verified this information in the first review, and that the company's reporting process has not changed since this review. Further, the respondent counters that the petitioners' allegations are based on published prices for HMS and shredded scrap. Noting that its supplemental response shows that HMS and shredded scrap constituted only six percent of its total scrap consumption during the POR, LM contends that it uses primarily less expensive types of scrap. Finally, LM notes that its supplemental response shows that almost seventy percent of its consumed scrap is either internal scrap or scrap purchased within Latvia. Of the remaining thirty percent, LM asserts that it purchases a significant quantity from Russia and other countries that are part of the former Soviet Union. It contends that the record of the proceeding indicates that the prices of internal scrap, domestically purchased scrap, and scrap purchased from former Soviet countries are much lower than published global scrap prices.

In their second submission, the petitioners reject LM's references to the verification report from the previous review as evidence that its reported scrap costs are accurate. They refer to *Television Receivers, Monochrome and Color, from Japan*,[12] as support for their position that information from a prior proceeding cannot be used to support arguments in a current proceeding. Second, the petitioners argue that the record for this review includes much more information on LM's reported scrap prices than the previous review. In referring to a decision from the Court of International Trade, the petitioners assert that the Department "cannot ignore relevant information which is before it."[13] Finally, the petitioners reject LM's argument that lower-grade, less-expensive scrap is acceptable in the

[11] On September 24, 2004, the Department rejected the petitioners' three sets of comments because they contained new allegations that went beyond rebutting, clarifying, or correcting the information submitted in LM's supplemental response. We also instructed the respondent to remove any references to the allegations in its one rebuttal submission. Therefore, the final date of the petitioners' three submissions is September 28, 2004; the final date of the respondent's submission is September 29, 2004.

[12] *Sanyo Electric Co., Ltd., and Sanyo Electric Inc. v. The United States*, Slip OP. 98-41, No. 87-04000620: Final Results of Redetermination Pursuant to Court Remand (April 6, 1998) (*Television Receivers, Monochrome and Color, from Japan*), at comment 3.

[13] *Floral Trade Council v. United States*, 709 F. Supp. 229, 230 (Court of International Trade 1989).

open hearth furnace process that it uses. The petitioners claim that the grade of the steel and the relevant product standards, not the type of furnace used in production, determine the scrap requirements for particular steel products.

The petitioners' third submission, citing *Stainless Steel Plate in Coils from Taiwan*,[14] claims that scrap is a commodity with published prices, thin profit margins, and sensitivity to price movements. Arbitrage, the petitioners argue, should reduce price differentials between markets. The petitioners maintain that LM's reported scrap costs for different grades of scrap do not reflect world prices.

Department's Position: We agree with LM. Although LM's scrap prices may deviate from published global scrap prices, there is no information on the record of this proceeding to indicate that LM did not accurately report its scrap costs, nor that would warrant the application of adverse facts available as requested by the petitioners. Section 776 of the Act states that the Department will apply the facts otherwise available in reaching a determination if:

> (1) necessary information is not available on the record, or
>
> (2) an interested party or any other person
>
>> (A) withholds information that has been requested by the administering authority or the Commission under this title,
>>
>> (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782,
>>
>> (C) significantly impedes a proceeding under this title, or
>>
>> (D) provides such information but the information cannot be verified as provided in section 782(i).

In this case, the necessary information is available on the record. LM reported all of its scrap prices and provided supporting documentation. Further, we do not agree that LM has withheld information or impeded the proceeding. LM has provided timely responses to the Department's requests for information throughout this proceeding. The company provided a complete cost of production response in its Section D questionnaire, including the required cost reconciliation. In its April 30, 2004,

---

[14] *Notice of Determination of Sales at Less than Fair Value: Stainless Steel Plate in Coils from Taiwan*, 64 FR 15493 (March 31, 1999) (*Stainless Steel Plate in Coils from Taiwan*).

second supplemental questionnaire response, LM provided a complete answer to our question on its scrap prices. In the fourth supplemental questionnaire issued to LM, we requested additional information on LM's reported scrap prices. LM provided us with a complete internal record of the prices it paid for scrap and the quantities it purchased during the POR.[15] The company separated domestic Latvian scrap purchases from purchases of imported scrap. In addition, the company provided us with documentation of its volume of scrap produced internally.[16]

With regard to the petitioners' argument that information from a prior proceeding cannot be used to support arguments in a current proceeding, we are not considering specific information that we verified in the previous proceeding in our analysis of the current proceeding. LM claims that it used the same methodology to report its scrap prices in this proceeding as it used in the previous proceeding.[17] The petitioners did not contest LM's methodology. Therefore, we have no reason to believe that the company's methodology is inherently flawed.

The basis of the petitioners' argument is that LM's scrap prices do not match published European prices during the POR. LM has offered an explanation for these differences and has documented its reported scrap costs. The information in LM's response to the fourth supplemental questionnaire supports its contention that its scrap prices may not be comparable to published European prices. LM's records show that the company used both significant amounts of scrap purchased domestically and internally produced scrap.[18] Further, the records show that LM's costs for domestically purchased scrap are not comparable to its costs for imported scrap.[19] Therefore, the difference between LM's reported prices and published European prices is not sufficient evidence for the Department to conclude that LM's information on its scrap purchases is unreliable and could not have been verified, or that LM did not cooperate to the best of its ability. Therefore, in accordance with section 776(a)(1) of the Act, we find that the application of facts otherwise available to LM's reported scrap costs is not warranted. For the final results, we have used LM's reported scrap costs in the calculation of its cost of production (COP) for rebar.

---

[15] See LM's fourth supplemental questionnaire response, dated September 2, 2004, at Exhibit 1.

[16] See id. at Exhibit 2.

[17] See LM's rebuttal brief, dated August 4, 2004, at page 2; and its "REVISED Response to Petitioners' September 14, 2004, Comments," dated September 29, 2004, at pages 3-4.

[18] See id. at Exhibits 1 and 2.

[19] See id. at Exhibit 1.

Comment 2: The Department's Treatment of LM's Merchandise Reported as "Off-spec"

In their case brief, the petitioners argue that the Department wrongly treated LM's home market sales of merchandise that LM labeled as "off-spec" as non-prime merchandise. The petitioners point out that LM's description of these sales shows that the model matching characteristics for the allegedly "off-spec" merchandise are identical to those of prime merchandise. The only difference, the petitioners note, is the length of the product. The petitioners point out a number of similarities between the sales identified as "off-spec" and LM's other sales. They also note that the prices charged for the "off-spec" sales were the same as those for the "on-spec" sales in some cases. In addition, the petitioners maintain that the number of home market sales identified as "off-spec" does not indicate that they were unusual and should be treated differently from LM's other home market sales. They contend that the Department should not treat these products as outside the ordinary course of trade or as sales of a different quality. Furthermore, they argue that this opens the door to gamesmanship by the respondent.[20]

The respondent did not comment on this issue.

Department's Position: We disagree with the petitioners. Although some of the merchandise that LM labeled as "off-spec" may be identical to prime merchandise in all characteristics except for length, we do not have any way of distinguishing this merchandise from merchandise that is genuinely non-prime. In its February 26, 2004, first supplemental questionnaire response, LM stated,

> Off-spec (non-commercial) length rebar also includes products rejected from the export sales due to discrepancy with the standard, e.g. rebar was rolled thinner than the third country standard requires it. In such cases the Quality department rejects such products from export as inadequate to standards requirements and issues a certificate of quality with appropriate indication of such inadequacy."[21]

Therefore, we have no way of distinguishing between "off-spec" merchandise that is of non-commercial length and "off-spec" merchandise that does not meet the third country standard.
The petitioners argue that "on-spec" and "off-spec" sales are produced at the same time and are otherwise indistinguishable other than by length. Although length is not a matching characteristic, LM's description of its sales of "off-spec" rebar indicates that other factors distinguish these sales from sales of prime rebar. As LM states,

---

[20] See petitioners' case brief at 6-8.

[21] See LM's response to the Department's first supplemental questionnaire, dated February 26, 2004, at page 11.

> {O}ff-spec rebar usually requires further processing such as cutting, welding or rolling (bending). Prime (commercial) length rebar is sent to the construction companies for specific construction purposes.[22]

Furthermore, we note that although the percentage of sales identified as "off-spec" in the home market is not inconsequential, the volume of these "off-spec" sales as a percentage of LM's overall worldwide sales is low.[23] With regard to the petitioners' argument regarding the overlap in prices, we note that it involves a limited number of sales and does not reflect the pricing levels of the "off-spec" sales in general. Therefore, despite the similarities noted by the petitioner, we do not believe that the information on the record of the current review definitively establishes that LM has misrepresented these sales as "off-spec" and "non-commercial" rebar which is not comparable to sales made in the U.S. market.

We did not match home market sales of non-commercial length rebar to U.S. sales of prime merchandise in the investigation or the first administrative review. Although this is an issue that we will analyze thoroughly in the next review, there is no information on the record of this proceeding to warrant a change in our treatment of these sales. Without more specific information on the merchandise that LM reported as "off-spec," if we were to adopt the petitioners' suggestion, we could potentially match U.S. sales of prime merchandise to home market sales of non-prime merchandise. Therefore, for the final results, we will comport with our stated intention in the preliminary determination, which was to exclude sales of merchandise that LM has labeled as "off-spec" from matching to U.S. sales of prime merchandise.

Comment 3: Alleged Calculation Errors

The petitioners allege that the Department made the following four calculation errors in the preliminary determination.

A. The petitioners allege that the Department failed to use cost data from the previous administrative review for CONNUMs 211, 212, and 213. They request that the Department assign the costs for CONNUM 211 to CONNUM 212 and 213. LM responds that it did not produce these CONNUMs during the POR, and that it did not export these CONNUMs to the United States during the POR. Therefore, LM asserts that the inclusion of cost information for these CONNUMs will not affect the Department's margin calculation.

Department's Position: LM's submitted U.S. sales database shows no sales of these CONNUMs, and all U.S. sales matched to identical sales in the home market database. Cost information for these

---

[22] See id., page 12.

[23] See id., Exhibit 10.

CONNUMs is not relevant to the margin calculation. Therefore, the Department will not include this cost information in the final margin calculation.

B. The petitioners allege that the Department calculated imputed credit expenses for the home market and the U.S. market using incorrect information that LM submitted for the PAYDAYSx field. The petitioners request that the Department amend this calculation for the final results. LM acknowledges that the petitioners are correct, but states that the incorrect information relates to sales that are not part of the margin calculation.

Department's Position: We agree with the petitioners and will revise this calculation by adding programming language for the final results that subtracts the SHIPDATH field from the PAYDATHx field.

C. The petitioners point out that the Department matched LM's home market sales of off-spec merchandise to U.S. sales. This contradicts the narrative of the *Memorandum from Daniel O'Brien and Shane Subler, International Trade Compliance Analysts, to Constance Handley, Program Manager, Regarding Analysis Memorandum for Joint Stock Company Liepajas Metalurgs,* dated June 2, 2004. The petitioners state that the Department appears to have deleted its standard programming language of PRIMEH=PRIMEU. LM did not comment on this issue.

Department's Position: We agree with the petitioners. However, we note that instead of setting sales of "off-spec" merchandise equal to non-prime, we have simply excluded these sales from our analysis in the comparison market program.

D. The petitioners claim that the Department understated the assessment rates for all importers by failing to use the appropriate surrogate for entered value in the margin program. They state that the Department deleted the variable USNETPRI1U and used the gross unit price (AGRSUPRU) in its place. LM responds that the Department correctly used gross unit prices in calculating assessment rates.

Department's Position: The appropriate price to use for entered value in the margin program should reflect the value of the merchandise on a F.A.S. (Free Along Side) vessel basis at the port of exportation to the United States. We have amended the margin program accordingly.

Agree__________   Disagree__________   Let's Discuss__________

____

Joseph A. Spetrini
Acting Assistant Secretary

for Import Administration

Date